



State of Utah

Department of  
Environmental Quality

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DIVISION OF ENVIRONMENTAL  
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To Whom It May Concern:

This is in response to your inquiry concerning the liability of a landowner through whose property petroleum simply migrates from a higher source and whose property makes no contribution to the release. As a practical matter, it is unlikely that the Division of Environmental Response and Remediation (Division) would ever pursue a downgradient facility while ignoring an upgradient source. Forcing the downgradient recipient of passively migrating petroleum to cleanup his or her land while the upgradient source continued to release petroleum into the environment would generally not serve to protect public health or the environment. Instead, the Division has typically required the current owner or operator of the facility releasing the petroleum into the environment to investigate, abate, and remediate any release.

If the Division takes the lead and incurs costs in investigating and cleaning up the release, the Division may seek to recover from statutorily defined responsible parties and from others who contribute to the release. Section 19-6-418 authorizes the Division to recover cleanup costs from responsible parties and any other person who caused or substantially contributed to the contamination. Section 19-6-402(24) of the UST Act, defines responsible parties to include those who own or owned USTs that contain or contained petroleum, those who operated, are operating, or controlling activities of USTs, and installers of USTs. Other liability provisions, such as Sections 19-6-420 and 19-6-424.5, continue with the statutory pattern where cleanup costs are apportioned based upon equitable principles and upon what each person contributed to the release.

Typically, the Division would not seek to recover costs from a landowner whose property was contaminated from an upgradient source and whose property did not contribute to the release. That being said, an owner of contaminated property must act reasonably in developing and using the property to avoid exacerbating the contamination or the threat to public health and the environment from the contamination. Otherwise, liability may be imposed.

Please feel free to call me if I may be of further assistance.

Sincerely,

Brad T Johnson, Executive Secretary (UST)  
Utah Solid and Hazardous Waste Control Board

BTJ/srb